

## AGENDA SUPPLEMENT

### Audit & Governance Committee

- To:** Councillors Pavlovic (Chair), Fisher (Vice-Chair), Mason, D Taylor, Wann, Webb, Lomas, Dave Mann (Independent Member) and Mendus (Independent Member)
- Date:** Wednesday, 5 February 2020
- Time:** 5.30 pm
- Venue:** The George Hudson Board Room - 1st Floor West Offices (F045)

The Agenda for the above meeting was published on **28 January 2020**. The attached report, marked 'to follow' on the original agenda, is now available for the following agenda item:

**9. Information Governance and Complaints** (Pages 1 - 12)

This report provides Members with updates in respect of information governance performance, ICO decision notices, publishing of reponse and LFSCO complaints.

This agenda supplement was published on **30 January 2020**.

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**Audit and Governance Committee****5 February 2020****Report of the Director of Governance****Information Governance and Complaints****1. Summary**

1.1 This report provides Members with updates in respect of:

- Information governance performance
- ICO decision notices
- Publishing of responses
- LGSCO Complaints from December 2019 to date of this report

**2. Information Governance Performance**

2.1 The council publishes performance data on timeliness for responding to requests made under Freedom of Information Act (FOI), Environmental Information Regulations (EIR) and Data Protection Act subject access to records requests (SARs), via the York Open Data platform via the below link.

<https://data.yorkopendata.org/group/freedom-of-information>

2.2 At Committee in December I proposed that work would be undertaken to provide performance reports in graphical formats and consider further comments and feedback given by Committee. However I have not been able to complete that work ahead of this meeting, due to my absence from the workplace since 5<sup>th</sup> December 2019. This will be completed for next meeting.

2.3 Work is underway across different information governance networks and groups in the Yorkshire and Humberside region regarding sharing of performance information that is informative and useful. I will update the Committee on the progress of this work.

### 3. ICO decision notices

- 3.1 If someone is unhappy with the response they receive in relation to an FOI, EIR or SAR request, or if they want to raise a complaint under data protection legislation in relation to the rights of individuals, there is an opportunity to seek an internal review and then to complain to the ICO. The ICO publishes their decision notices and their full reports at

<https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query=&f.By+authority|publicAuthority=City%20of%20York%20Council>

- 3.2 Since the last report in December, the ICO has now published their decisions notice from 15<sup>th</sup> October 2019 to 17 January 2020. The summaries of these are available at Annex 1

### 4. Publishing responses

- 4.1 FOI and EIR responses have been published on the council's website for a number of years. However the usability of the current publishing of responses is not ideal and has been scrutinised by customers and councillors. The current classification of documents makes it unclear where to find specific information, the order is not automatically chronological and there is no dedicated search functionality.
- 4.2 Also statistics relating to 01/04/2018 to 31/03/2019 show usage of the FOI headline pages on the website is low.
- 4.3 New regulations, known as '[Public Sector Bodies Websites and Mobile Applications \(No. 2\) Accessibility Regulations](#)', came into force in 2018 which mean our websites must achieve level 'AA' of the [W3C's Website Content Accessibility Guidelines \(WCAG 2.1\)](#),
- 4.4 As a result of Accessibility Regulations all responses hosted on the council's website must be reviewed including the use and nature of PDF documents which means there is a high risk of breaching the accessibility guidelines.
- 4.6 The (historic and current) amount, and the rate at which they're published means the issue is growing, with more and more significant capacity needed to address the remedial workload.

- 4.6 We are going to stop publishing responses on the website (or other online channel, as all channels need to comply with Accessibility Regulations) dated from December 2019 and replace with an adequate 'disclosure log' online in 'plain text'. This approach will be implemented for a 6 month trial to better understand customer appetite and demand. The disclosure log will complement the existing online form, which allows customers an easy online method to request information

## 5. **Complaints**

- 5.1 Local Government and Social Care Ombudsman (LGSCO) cases from the last report to Committee in December, to the date of this report are shown at Annex 2.
- 5.2 The annex details the decisions and actions recommended by the LGSCO.
- 5.3 The information governance and complaint team continue to work with the Corporate Management Team, Directorate Management Teams as well as with individual service areas to identify areas for improvement or shared learning opportunities.

## 6. **Consultation**

Not relevant for the purpose of this report.

## 7. **Options**

Not relevant for the purpose of this report.

## 8. **Analysis**

Not relevant for the purpose of this report.

## 9. **Council Plan**

- 9.1 The council's information governance framework offers assurance to its customers, employees, contractors, partners and other stakeholders that all information, including confidential and personal information, is dealt with in accordance with legislation and regulations and its confidentiality, integrity and availability is appropriately protected.

**10. Legal Implications**

The Council has a duty to comply with the various aspect of information governance related legislation.

**11. Risk Management**

The council may face financial and reputational risks if the information it holds is not managed and protected effectively. For example, the ICO can currently impose civil monetary penalties up to 20million euros for serious data security breaches. The failure to identify and manage information risks may diminish the council's overall effectiveness and damage its reputation. Individual(s) may be at risk of committing criminal offences.

**12. Recommendations**

Members are asked:

- To note the details contained in this report.

Contact Details

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Chief Officer Responsible  
for the report: Janie Berry,  
Director of Governance

Report  
Approved

Date 30 January  
2020

**Wards Affected:** List wards or tick box to indicate all

All

For further information please contact the author of the report

**Annexes**

Annex 1 - ICO decision notices for the reporting period – summary

Annex 2 – LGSCO cases

**Background Information**

Not applicable

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## City of York Council - Decision Notices

### 17 Jan 2020 - Decision notice FS50896378

The complainant requested information from the City of York Council (“the Council”) relating to breaches of planning conditions. The Commissioner’s decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation. The Council must issue a substantive response to the request in accordance with its obligations under the EIR. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

EIR 5(2): Complaint upheld

### 27 Nov 2019 - Decision notice FS50879913

The complainant requested information from City of York Council (“the Council”) relating to an investigation into the exonerated Deputy Leader. The Commissioner’s decision is that the Council has failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation. The Council must issue a substantive response to the request in accordance with its obligations under the FOIA. The Council must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

FOI 10: Complaint upheld

### 24 Oct 2019 - Decision notice FER0827677

The complainant has requested information held by City of York Council (the council) about York City Football Club and its contribution to the funding of a new community stadium. The council disclosed some information in response to the complainant’s request and then, during the Commissioner’s investigation, confirmed that a small amount of additional information could be released. The council applied regulation 12(5)(e) of the EIR- confidentiality of commercial or industrial information, to the remainder of the information. The Commissioner’s decision is that whilst the council was correct to have considered parts 1, 2, 3, 4, 5 and 7 of the request under the

EIR, it should have considered part 6 of the request under the FOIA. The Commissioner is also satisfied that, with the exception of some information requested at part 2 of the request, the council is entitled to rely on regulation 12(5)(e) of the EIR, and section 43(2) of the FOIA, when withholding that information identified as being relevant to the request. The Commissioner requires the council to release some information relevant to part 2 of the request, and also the additional information it had already agreed to disclose, if it has not already done so.

FOI 43(2): Complaint not upheld EIR 12(5)(e): Complaint upheld

**15 Oct 2019 - Decision notice FS50831447**

The complainant has requested information relating to the adoption of a private road into the public highway. The Commissioner's decision is that on the balance of probabilities, City of York Council has located all the information held in scope of the request. However it breached Regulation 5(2) in failing to respond to the request within 20 working days. The Commissioner does not require any steps.

EIR 5(1): Complaint not upheld EIR 5(2): Complaint upheld

LGSCO Ref	Service Area	Directorate	Summary of Final Decision	Actions	Date of Final Decision	Actions Complete	Actions/remedies completed in time y/n	Decision
19004318	Highways	EAP	Mr X complained the Council delayed in carrying out remedial works to pipes near to his property. He said this had caused damage to his property in the past and it was causing him and his family distress. There was no fault in the Council's actions.	Case closed	03/12/2019	N/A	N/A	Not upheld; No maladministration
19011645	Adult Social Care	HHASC	Ms B complains about the Council's treatment of her in relation to the care of her partner. The Ombudsman will not investigate the complaint because there is no evidence of fault by the Council in how it has dealt with matters and no grounds on which to base an investigation.	Case closed	16/12/2019	N/A	N/A	Closed after initial enquiries - No further action

19016172	CEX	All	The Ombudsman will not investigate Mr X's complaint that the Council will not compensate him for damage caused to his car by potholes. It is reasonable to expect Mr X to resort to court action for the compensation he seeks and the complaint is therefore outside the Ombudsman's legal remit.	Case closed	06/01/2020	N/A	N/A	Closed after initial enquiries - No further action
19012939	CEX	All	The Ombudsman will not investigate Mr B's complaint the Council accused him of defamation in May 2017. The complaint is late and there are no good reasons for the Ombudsman to exercise his discretion and now investigate.	Case closed	14/01/2020	N/A	N/A	Closed after initial enquiries - No further action
19006371	Education	CSC	The Ombudsman will not investigate this complaint about the provision of support for education transport for the complainant's daughter. This is because there is no evidence of fault in the	Case closed	09/01/2020	NA	NA	Closed after initial enquiries - No further action

			way the Council's appeal panel considered the complainant's appeal against its decision.					
19013334	Highways	EAP	The Ombudsman will not investigate this complaint that the Council is not properly maintaining the highway. It is unlikely he would find fault by the Council and the complainant can seek a remedy in court.	Case closed	17/01/2020	N/A	N/A	Closed after initial enquiries - No further action

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